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SUPREME COURT OF THE UNITED STATES.

No. 77.

JOHN B. IRVINE, APP'T,

vs.

WILLIAM B. MARSHALL AND THOMAS BARTON.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MINNESOTA.

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TERRITORY OF MINNESOTA,
District Court, 2d District, Ramsey County.

JOHN R. IRVINE
against
WILLIAM R. MARSHALL
and Thomas Barton.

To the defendants, William R. Marshall and Thomas Barton:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, in St. Paul, within twenty days after the service hereof, exclusive of the day of such service, and if you fail to answer the said complaint within the time aforesaid, the plaintiff will apply to the court for the relief demanded in the complaint.

Dated December 19th, 1854.

RICE, HOLLINSHEAD & BECKER,
Att'ys for Plff.

TERRITORY OF MINNESOTA,
District Court, 2d District, Ramsey County.

JOHN R. IRVINE
against
WILLIAM R. MARSHALL
and Thomas Barton.

The complaint of the above-named plaintiff respectfully shows to this court: That on the 11th day of September, 1854, certain of the public lands belonging to the United States were sold at public auction at the land office at Stillwater, in this Territory, by or under the direction of the proper officers thereof, pursuant to a proclamation of the President of the United States; that among such lands, the southwest quarter of section number eleven, in township number twenty-eight north, of range twenty-three west, situated in the county of Ramsey, and containing one hundred and sixty acres, was thus sold, and was bid off and purchased at said sale by the above-named defendant, William R. Marshall, at the rate of one dollar and twenty-five cents per acre, the whole amount of the purchase-money paid therefor being two hundred dollars; that of this sum the defendant, Thomas Barton, paid one hundred dollars, and the plaintiff furnished one hundred dollars, and that the said Marshall received the same in trust, and purchased said land therewith in trust for the plaintiff and said Barton, and took

a certificate of purchase in his own name, pursuant to a mutual understanding between the plaintiff and said Barton.

That the plaintiff is informed and believes that said Barton now claims all of said tract of land, and has demanded of said Marshall a conveyance thereof to him, by reason whereof said Marshall refuses to convey to the plaintiff his rightful portion thereof, to wit, one undivided half part.

That on the 18th day of December, 1854, the plaintiff tendered to said Marshall, at his usual place of business, and during the usual hours of business, in St. Paul, in said county of Ramsey, a deed of conveyance of one undivided half part of said tract of land from him, said Marshall, to the plaintiff, and requested him to execute the same, which he, the said Marshall, then and there refused to do; a copy of which deed is hereto annexed, marked A, and made a part of this complaint.

And the plaintiff further shows that said Marshall is about to convey all said tract of land to said Barton in fraud of this said plaintiff's rights; wherefore the plaintiff demands that the said Marshall may be adjudged to convey to the plaintiff one undivided half part of said tract of land by a proper and sufficient deed of conveyance; and in case of his refusal so to do, that then the judgment of this court shall stand as and may be recorded in the place of such deed of conveyance, and that the plaintiff may have such further or such other relief as by the nature of his case he is entitled to, and also that the said defendant, Marshall, may be enjoined by a writ of injunction or order issuing out of this court from conveying or disposing of one undivided half part of said tract of land to said defendant, Barton, or any other person, except the plaintiff.

RICE, HOLLINSHEAD & BECKER,
Att'ys for Plff.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

John R. Irvine, the plaintiff above named, being duly sworn, deposes and says that the foregoing complaint is true of his own knowledge, except as to the matters therein stated to be upon his information or belief, and as to those matters he believes it to be true.

JOHN R IRVINE.

Subscribed and sworn to before me this 19th day of December, 1854.

J. M. STONE,
Judge of Probate.

Paper marked A, referred to in the annexed and foregoing complaint.

Know all men by these presents, that I, William R. Marshall, of

the county of Ramsey, and Territory of Minnesota, in consideration of the sum of one hundred dollars in hand paid by John R. Irvine, of the second place, the receipt whereof is hereby acknowledged, have bargained, sold, and quit-claimed, and by these presents do bargain, sell, and quit-claim unto the said John R. Irvine, and to his heirs and assigns, forever, all my right, title, interest, claim, and demand in and to the following described piece or parcel of land situate, lying, and being in the county of Ramsey, and Territory of Minnesota, to wit: the undivided one-half part of the southwest quarter of section numbered eleven, (11,) in township numbered twenty-eight (28) north, of range numbered twenty-three (23) west: To have and to hold the said quit-claimed premises, with all the privileges and appurtenances thereto belonging, to the said John R. Irvine, his heirs and assigns, forever.

In witness whereof, I have hereunto set my hand and seal this 18th day of December, in the year 1854.

[SEAL.]

Signed, sealed, and delivered in presence of.

Let a writ of injunction issue as prayed for, upon the filing of a bond approved by me.

M. SHERBURNE, *Judge.*

AT CHAMBERS, *Dec.* 22, 1854.

RAMSEY COUNTY, *ss:*

I certify that on the 19th day of December, 1854, I personally served the within summons and complaint upon William R. Marshall and Thomas Barton, by delivering to each of them certified copies of the same.

A. M. FRIDLEY, *Shff.*
B. A. W. TULLIS, *Dep'ty.*

TERRITORY OF MINNESOTA,
County of Ramsey, District Court, 2d Judicial District.

JOHN R. IRVINE
against
WM. R. MARSHALL and
Thomas Barton.

Then came the defendants by their attorney, Wm. G. Le Duc, and demur to the complaint of the plaintiff herein, and specify the following grounds of demurrer:

First. The complaint does not state on its face facts sufficient to constitute a cause of action.

Second. The complaint alleges that the defendant, Marshall, purchased the land mentioned therein in trust for the plff. and the

defendant, Barton. No trust arises or can grow out of the facts stated.

Third. Admitting that a trust could arise upon the facts, the complaint does not show the plff. entitled to the relief sought, inasmuch as it does not specify the nature of the trust.

Fourth. There is a defect of parties' dfts. It does not appear that the deft., Barton, has any interest in the event of the action. It does not appear that the deft., Barton, has any interest in the event of the suit adverse to the plaintiff.

W. G. LE DUC,
Att'y for the Defts.
By WILKINSON, B & B.

GENTLEMEN: Take notice that the above demurrer will be brought on for argument before his honor Moses Sherburne, judge of the second judicial district, at his chambers, in the city of St. Paul, on the fourth Wednesday of March, 1855, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated March 12, 1855.

W. G. LE DUC,
Att'y of Defts.

To RICE, HOLLINSHEAD & BECKER,
Plffs. Attys.

[The foregoing endorsed:] District court, second judicial district. Joh. R. Irvine vs. Marshall & Barton. Dr. demurrer. We admit service of a copy of the writing this 12th of March, 1855. Rice, Hollinshead & Becker, plffs. attys. Sherwood Hough, dept. clerk. W. G. Le Duc, defts. attys.

D. C. AT CHAMBERS.

JOHN R. IRVINE
against
WILLIAM R. MARSHALL
and another.

Demurrer to complaint.

There is no allegation in the complaint that the conveyance was taken without the "knowledge or consent" of the complainant, nor that the purchase was made in "violation of some trust." The complainant does not therefore bring himself within the provisions of sec. 9, page 202, of the R. S., and the demurrer must be sustained. See also sec. 5 of the same chapter.

I do not discover any defect of parties. The plaintiff has twenty days to amend, so as to bring his complaint within the provisions

of sec. 9 referred to, if he shall be advised that the facts will warrant it.

M. SHERBURNE, *Judge.*

Apr. 16, 1855.

[The foregoing endorsed:] John R. Irvine vs. Wm. R. Marshall, and another. Decision. Filed April 19, 1855. Sherwood Hough dept. clerk.

TERRITORY OF MINNESOTA,
District Court, 2d District, County of Ramsey.

JOHN R. IRVINE
against
WILLIAM R. MARSHALL
& Thomas Barton.

In pursuance of a decision of court filed in this case on the 19th day of April, A. D. 1855, sustaining the defendant's demurrer to the complaint of the plaintiff in this case, and on motion of Wilkinson, Babcock, and Brisbin, att'ys for the above-named defendants, it is hereby adjudged that the defendants above named recover of the said John R. Irvine, plaintiff, the sum of twenty-eight dollars and eighty-five cents costs and disbursements, ($28.85.)

Dated April 25, 1855.

GEO. W. PRESCOTT, *Clerk.*

For all proceedings before notice of trial	$5 00
subsequent to do.	7 00
" trial of issue of law	12 00
Clerk's fees	4 85
	$28 85

[The foregoing endorsed:] District court, 2d dist., Ramsey co. John R. Irvine vs. Wm. B. Marshall & Thomas Barton. Judgment roll. Filed Apr. 28, 1855. Sherwood Hough, dept. clerk.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

I, George W. Prescott, clerk of the district court of said county, hereby certify the foregoing to be a true copy of the several papers constituting the "judgment roll" in the cause therein entitled, with the several endorsements thereon, as the same appears on file in said cause in said clerk's office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, at St. Paul, in said county, this 6th day of Oct., A. D. 1855.

[L. S.]

GEORGE W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
In the District Court, 2d Judicial District, Ramsey County.

JOHN R. IRVINE
vs.
WILLIAM R. MARSHALL & Thomas Barton.

Please take notice that an appeal to the next term of the supreme court of the Territory of Minnesota has been taken from a judgment entered on the 25th day of April, 1855, in the district court, 2d district, Ramsey county, in the above-entitled action, and that an undertaking, accompanied by an affidavit of the sureties thereto, is herewith filed on said appeal.

D. COOPER, *Pltffs. Atty.*
June 26, 1855.

To GEORGE W. PRESCOTT, Esq.,
Clerk Dist. Court, 2d Dist., Ramsey Co.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

I, George W. Prescott, clerk of the district court in and for said county, certify that the foregoing is a true copy of the notice of appeal in the cause therein entitled, which is on file in said clerk's office, and of the endorsements thereon.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at St. Paul, in said county, this 6th day of Oct., A. D. 1855. [L. S.]

GEO. W. PRESCOTT, *Clerk.*

[The foregoing endorsed:] Supreme court, Ter. of Minnesota. John R. Irvine, appellant, vs. Marshall & Barton, appellees. Appeal papers from district court, Ramsey county. Filed in supreme court, Oct. 6, 1855. Geo. W. Prescott, clerk.

SUPREME COURT, January term.

JOHN R. IRVINE, appellant,
vs.
WILLIAM R. MARSHALL and THOMAS BURTON, appellees.

Assignment of errors.

The court erred in sustaining the demurrer to the plaintiff's complaint for the following reasons:

From the facts averred in the complaint, the law implies a trust in favor of the plaintiff in proportion to the amount of purchase-money furnished by him.

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1 John Ch. cases, 582 to 586; 2 ibid 504 to 509; 1 John ca., 153, 155; 1 John S. C., 45; 3 John R., 21 to 227; 11 John, R., 91–9; 23 John, 463; 2 Paige, 218, 238; 4 ibid, 579, 80; 16 ibid 618; 2 Watts, 323; 4 Watts and Sergt., 49; 8 N. Hump. R., 787, 95; 2 Fairfield, 9, 22; 2 Howard Miss. R., 358; 1 Humphrey, 491, 96; 4 Iden, 238, 4; 2 Cushing, 227, 32; Vol. Land Ca., in eq., Dyer vs. Dyer, 200, 1, 2, 3, 192, et seq.; 470, 3 M. Hump., 170; M. Hump., 397; 4 Brown's Ch. R., 405; 3 John, 20 a; Fonblonque's Eq., 393, 395; 2 Wash. C. C. R., 445.

There is nothing in the statutes of frauds, of which that regulating uses and trusts is a branch, to interfere with or prevent resulting trusts, or trusts arising by implication of law, such trusts being expressly excepted from the operation of those statutes.

1 John Ch. R., 582; 2 ibid, 405; 14 Pick., 711; 2 Blackford, 198; 4 Har. and John, 551; vol. L'd Cas., in eq., 192; 10 Ves. 367; 17 Ves. 17; 3 John 20 a; 1 Eiler, 51 to 515, 2 to 7; 1 Burb. S. C., 599; 10 Ves. 511, 17; 1 Ch. en., 310; 2 Green's Ch., 474; Fonbonque, 47, 4th Amer. ed.

The relief to which the plaintiff was entitled at common law has not been changed by the statute of frauds, or by the statute regulating uses and trusts. R. S. 202, sec. a, 2 a 7, sec's a and 7; a Ves. 52, a 5, a 7 and c; 1 Cooper's Eq. Pl., 25 a; 1 vol. l'd cas. in eq., 201, cas. cited; 2 Ves.; 1 Kent, 514, 510, 511; Fonblanque's Eq., 41, 42, 42, et seq.; 9 Ves.; Fonblanque's, 41, 145; 3 Crunch, 140; Cooper, 712; 4 Dull., 153; 2 Eder, 224; 2 Rolls. Abr., 378; a Miss. R., 30; 2 Atk. 275; 3 Atk. a 4 a; 1 eq. cas. Abr., 358; 2 John Ch., 190; 15 John R., 379; Doctor Bonham's case, 8 Rep., 118; House Rep., a 87; Hos. Repr., 87.

Section seven of chapter 44 of Revised Statutes does not apply to this case.

1 John cas. 1, a 3; 2 Hawes and Gill, 323; 10 Ves., 5, 17; 1 vol. ld. cas. in eq., 149, side paging; idem 200, top paging, and cases there cited; 2 vol. Pr., 1 Leod, cases in eq., 557 to 0; Fonblanque, 395.

Statutes must be constructed with reference to the principles and rules of the common law, and it is not to be presumed that the Legislature intended to make any innovations upon the common law further than right and justice absolutely required.

Fonblanque 42; 1 Kent, 510, 11, 14; 4 Dall., 185; Fonblanque eq., 41, 42, 43.

The defendants could not avail themselves of the statutes of frauds, and uses, and trusts, upon demurrer, but must plead them. Mitford's Eq. Pl. 312; 2 eq. draft, 2d ed., 112; 1 Arkansas R., 391; 2 R. S. W. T., 137 and 135, 4 Brown's Ch., 472, eq. draft, 107; Van Sanford, P. C., 2 a to 7, 8, 9; 2 Duer. R. to 09; Sanford, 153; Story's Eq. P. C., 7 a 7, 2, 3, 4, 5, a 7; Ves. 52, a 5, a 7; 10 Serg't R., 238, 345; 7 Bur. 119; vol. 2, pt. 1, l'd cas. in eq., 500; Fonblanque's Eq., 148, 149, 150; 1 Peter's Rep., 388.

Facts admitted by demurrer stand upon the record as confessed.
Story's Eq., P. C., § 7a a, 7 a 7, 7 a 8—notes.
Mitford's Eq., P. C., 2 a 7.

Having admitted the facts averred in the complaint, by the demurrer, it is too late to call for an interposition of the statutes to prevent proof of what has already been admitted and confessed.
Story's Eq., P. C., 7 a 7, 7 a 8, 7 a 9; 9 Ves., 51 a, 5, 19.

No court will permit the interposition of a statute, for prevention of frauds, to cover or protect a fraud.
Fonblanque's Eq., 47.
2 Roll's Abr., 378; Cowper, 712.
Story's Eq., P. C., 7 a 7, and note, 7 a 8, and note. Revised Statutes, Minnesoto, pp. 202 et seq., cited to several points.

D. COOPER,
Att'y of Appellant.

Jan. 14, 1856.

[The foregoing endorsed:] Supreme Court, Jan'y term, 1856. John R. Irvine, appellant, vs. William R. Marshall and Thomas Barton, appellees. Assignment of errors. Points and authorities. Filed Jan. 14, 1856. G. W. Prescott, clerk.

D. COOPER,
Att'y for Appellant.

IN SUPREME COURT,
Minnesota Territory.

JOHN R. IRVINE
vs.
WM. R. MARSHALL and THOMAS BURTON. } Jan'y term, A. D. 1856.

On appeal.—Points for Resp'ts.

No trust arises or results to the plaintiff upon the facts stated in the complaint.
Sec. 7, ch. 44, 202, R. S.
4 Kent Com., 323.
Norton vs. Stone, 8 Paige, Rep. 222.

There is no allegation in the complaint that the conveyance, the certificate of purchase of the land, was taken to Marshall "without the knowledge or consent" of pl'ff, or "in violation of a trust."
Sec. 9, ch. 44, 203, R. S.

The complaint does not show a valid express trust, created at the time of the receipt of the money, or of the purchase by Marshall.
Sec. 6, ch. 62, 267, R. S.
Sec. 11, ch. 44, 203, R. S.
Sect's 3 and 5, ch. 44, 202, R. S.

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The complaint does not show the pl'ff entitled to the relief prayed for or any other.

Sec. 16, ch. 44, 203 and 4, R. S.

W. G. LE DUC.

[The foregoing endorsed:] In Supreme Court, Minnesota Territory. Jan'y term, A. D. 1856. John R. Irvine vs. Wm. R. Marshall and Thomas Burton, for resp't. Filed in Supreme Court, Jan'y 11, 1856.

G. W. PRESCOTT,
Clerk.
LE DUC & NORTON,
For resp't.

SUPREME COURT,
Territory of Minnesota.

January general term, A. D. 1856, 12th day—Jan'y 28.

JOHN R. IRVINE, appellant,
against
MARSHALL & BARTON, respondents.

Appeal from the district court of Ramsey county.

This day came the parties, by their attorneys, and thereupon this cause came on to be heard upon the the return on appeal from the district court of Ramsey county, and upon the grounds assigned for error, and the same was argued by counsel and submitted to the court.

Adjourned from January general term, 1856, 18th day—July 15.

JOHN R. IRVINE, appellant,
against
MARSHALL & BARTON, respondents.

This cause having been argued and submitted, after due consideration of the matters at issue herein, it appears to the court that in the order and judgment thereon in the court below there is no error. It is therefore ordered that said judgment be in all things affirmed, with costs to respondents.

A true record.
Attest: GEO. W. PRESCOTT,
Cl'k.

A true transcript of the record.
Attest: GEO. W. PRESCOTT,
Clerk.

TERRITORY OF MINNESOTA,
In Supreme Court.

JOHN R. IRVINE,
vs.
THOMAS BARTON and WILLIAM R. MARSHALL.

Costs.

For all procedings before argument	$20 00
" argument	30 00

Disbursements.

Clerk's fees to be taxed	5 90
Copying argument and points, 200 folios	14 00
Aff't to disbursements	25
	$70 15

Taxed as above, Aug. 9, 1856.

G. W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

John B. Brisbin, of said county, being first duly sworn, says, that the sums above charged under the caption of disbursements have been and will be actually incurred in the entry and perfection of judgment herein.

JOHN B. BRISBIN.

Sworn to before me, this 5th day of August, 1856.

HARVEY OFFICER,
Notary Public, M. T.

GENTLEMEN: Take notice that an application will be made to the clerk of the supreme court, at his office in the Capitol, on the 9th day of August, 1856, at ten o'clock a. m. of that day, to have the above bill of costs taxed, and the demand thereof allowed in the entry of judgment in the foregoing entitled action.

LE DUC & BRISBIN, & BIGELOW,
Atty's of Def'ts, Appellees.

To RICE, HOLLINSHEED, & BECKER,
Atty's of Appellants.

[The foregoing endorsed:] In Supreme Court. John R. Irvine, appellant, agst. Marshall and Barton. Tax's of c'ut. Notice. Service of a copy of the within admitted this 4th day, 1856. Hollinsheed & Becker. Le Duc & Barton & Bigelow, att'ys for appellants.

UPREME COURT, TERRITORY OF MINNESOTA.

JOHN R. IRVINE, appellant,
against
WILLIAM R. MARSHALL &
Thomas Barton, respts.

This cause, brought to this court by appeal from the order and judgment thereon in the district court of Ramsey co., having been argued and submitted, now, pursuant to the order of court, that the judgment below be on all things affirmed, with costs to respondents, on motion of Brisbin & Bigelow, respondents' attorneys, it is hereby adjudged that the respondents above named recover of the appellant above named the sum of seventy dollars and fifteen cents costs taxed in this court.

Dated August 9, 1856.

GEO. W. PRESCOTT, *Clerk.*

Statement for judgment.

Statute costs	50 00
Clerk's fees	5 90
Disbursements sworn to	14 25
	$70 15

[The foregoing endorsed:] Supreme court, Territory of Minnesota. John R. Irvine, appellant, against Marshall & Barton, respondents. Judgment roll. Filed Aug. 9, 1856. G. W. Prescott, clerk.

SUPREME COURT OF THE TERRITORY OF MINNESOTA.

JOHN R. IRVINE
vs.
WILLIAM R. MARSHALL
& Thomas Barton.

Appeal.

To William R. Marshall and Thomas Barton.

Take notice that the plaintiff in the above-entitled action appeals to the Supreme Court of the United States from the order and judgment made and rendered in said action by the supreme court of the Territory of Minnesota, at the January term thereof for 1856.

D. COOPER, *Att'y for Pltff.*

Aug. 27, 1856.

[The foregoing endorsed:] "Supreme court of the Territory of Minnesota. John R. Irvine, appellant, vs. William R. Marshall & Thomas Barton, appellees. 'We hereby accept service of the within notice of appeal by copy this 1st day of September, 1856. Brisbin & Bigelow, att'ys for appellees.' Notice of appeal to Supreme Court of the United States. Filed Aug. 29, 1856. Geo. W. Prescott, clerk sup. court, M. T. D. Cooper, att'y for appellant."

SUPREME COURT OF THE UNITED STATES.

JOHN R. IRVINE, appellant,
vs.
WILLIAM R. MARSHALL & Thomas Barton, appellees.

Affidavit of value of property involved on appeal.

TERRITORY OF MINNESOTA,
Ramsey co., ss:

John R. Irvine, of the city of St. Paul, being duly sworn, says: That he is the appellant in the above-entitled suit; that he appeals from the order and judgment made and rendered therein by the Supreme Court of the United States for the Territory of Minnesota, and that the value of the property in controversy in said action, exclusive of costs, exceeds one thousand dollars, and further say not, except that his said appeal is taken in good faith.

J. R. IRVINE.

Sworn to and subscribed before me this 21st day of Aug., 1856.

F. McCORMICK,
Notary Public.

CLERK'S OFFICE, SUPREME COURT,
Territory of Minnesota.

I, George W. Prescott, clerk of the supreme court above named, hereby certify that I have carefully compared the foregoing with the original judgment roll, notice of appeal, affidavit of amount involved, and application for allowance of appeal, in the cause therein entitled, which are on file and of record in my office, and that the same are in all respects true and complete copies of said originals.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Saint Paul, this 13th day of November, A. D. 1856. [SEAL.]

GEORGE W. PRESCOTT, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

JOHN R. IRVINE, appellant,
vs.
WILLIAM R. MARSHALL & Thomas Barton. } On appeal.

To the honorable Moses Sherburne, associate justice of the supreme court of the United States for the Territory of Minnesota:

Application is hereby made to your honor for the allowance of an appeal to the Supreme Court of the United States from the order and judgment made and rendered by the supreme court of the Territory of Minnesota, at the January term thereof for 1856, in a certain suit wherein John R. Irvine, the appellant here, was plaintiff, and William R. Marshall and Thomas Barton, the appellees, were defendants.

D. COOPER,
Att'ys for Appellant.

An appeal in the within-entitled cause is granted and allowed.
M. SHERBURNE, *Judge.*

August 30, 1856.

UNITED STATES OF AMERICA, *ss:*

To William R. Marshall and Thomas Barton:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the fourth Monday of December next, pursuant to an appeal, the allowance of which has been filed in the clerk's office of the supreme court of the United States for the Territory of Minnesota, allowed and taken from the order and judgment made and rendered by the court last aforesaid, at the January term of said court for 1856, wherein John R. Irvine is appellant, and you are the appellees, to show cause, if any there be, why the order and judgment appealed from should not be corrected, and speedy justice should not be done to the parties in that behalf.

St. Paul, August, A. D. 1856.

M. SHERBURNE,
Associate Justice of the Supreme Court U. S. for Territory of Minnesota.

[Endorsed.] Supreme Court of United States. John R. Irvine, appellant, vs. William R. Marshall & Thomas Barton, appellees. We hereby accept one service of the within citation by copy, this 1st day of September, A. D. 1856. Burton & Bigelow, att'y of appellees. Citation. Filed Aug. 29, 1856. Geo. W. Prescott, clerk sup. court, Min. Ter. D. Cooper, att'y for appellant.